

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JOSIAH M., et al., Persons Coming Under
the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

JOSIAH M., et al.,

Appellants.

F070539

(Super. Ct. Nos. JD133153-00,
JD133154-00)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. William D.
Palmer, Judge.

Kimball J.P. Sargeant, under appointment by the Court of Appeal, for Appellants.

No appearance for Plaintiff and Respondent.

-ooOoo-

Siblings Josiah M. and S.M. (collectively the children) were placed into protective
custody when their cousin, Trevor J., was severely burned by bathwater while in the care

* Before Gomes, Acting P. J., Kane, J. and Franson, J.

of their parents, Thomas M. (father) and L.W. (mother). As a basis for jurisdiction, the Kern County Department of Human Services (Department) alleged the children came within the provisions of Welfare and Institutions Code section 300, subdivisions (a) and (g),¹ as they were at risk of suffering physical harm or injury inflicted non-accidentally by their parents based on the burns Trevor suffered for which the parents failed to offer a reasonable explanation, and they had been left without any provision for support due to their parents' incarceration. At the jurisdictional hearing, the juvenile court amended the petition to conform to proof by striking the term "non-accidental" included in the allegation under subdivision (a) and making the allegation one under subdivision (b), which it found true along with the subdivision (g) allegation.

The children appeal. Their sole contention is that the juvenile court erred in failing to find the subdivision (a) allegation true. They admit, however, that the juvenile court has jurisdiction over them regardless of the outcome of this appeal. Because review of their contention cannot grant the children any effective relief, we decline to address it and dismiss the appeal.

BACKGROUND

The family came to the attention of the Kern County Department of Human Services (Department) on August 8, 2014,² when the children's cousin, one-year-old Trevor J., sustained third degree burns to his lower extremities and feet, and second degree burns to his genitalia, while in mother's and father's care. The burns covered approximately 35 percent of Trevor's body and required surgery. Mother and father were arrested on charges of child abuse, while the children were taken into protective custody.

Dependency petitions were filed alleging the children came within the provisions of section 300, subdivisions (a) and (g). Under subdivision (a), the petition alleged the

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Subsequent references to dates are to dates in 2014.

children were at risk of suffering physical harm or injury inflicted non-accidentally by mother and father based on the burns Trevor suffered, which allegedly occurred when mother and father attempted to bathe Trevor after he defecated on the bed, floor and his body, and for which mother and father had no reasonable explanation. Under subdivision (g), the petition alleged the children had been left without any provision for support, as their parents were incarcerated and unable to arrange for their care.

The children were detained on August 13 and placed together in a foster home; a contested jurisdictional hearing was set. In reports prepared for the jurisdictional hearing, the social worker related the investigation into Trevor's injuries.

On August 8, police officers were dispatched to the family's apartment, where fire department emergency personnel were present. Trevor had sustained traumatic burns to both legs and buttocks. His legs were bright red and his dark flesh was peeling from his body. Despite his injuries, Trevor remained nearly silent. Trevor was transported to a local hospital by ambulance. At the hospital, the treating physician described Trevor's injuries as third degree full thickness burns covering over 35 percent of his body. Since the hospital was not equipped to handle pediatric burn patients, Trevor was transported to Community Regional Medical Center in Fresno for further treatment.

Father told police when interviewed at the scene that he had been roommates with Trevor's mother, Jazmine W., for about four months, and their relationship was platonic. Jazmine left for work around 8 a.m. that morning, leaving Trevor in his care, as she typically did four to five days a week. According to father, Trevor had a habit of removing his diaper when he soiled himself. That morning, father saw Trevor had defecated and taken off his diaper. Father decided to bathe Trevor in the upstairs bathroom. Father claimed that it took him five minutes to bathe Trevor; the water temperature was warm when he placed Trevor in the bath and remained consistent throughout that time; and he noticed Trevor's burns after he briefly left Trevor

unattended in the bathtub while he went to retrieve a towel. Father also claimed that no one else was inside the apartment when the incident occurred.

Father was transported to the police station, where two police detectives interviewed him after advising him of his *Miranda*³ rights. Father at first told the detectives he lived at the apartment with his children, Jazmine and her son, Trevor, and he had not seen mother in over a month, as she had returned to Washington. Father said his son was with a neighbor and his daughter with a friend for whom he would not or could not provide contact information. Jazmine, however, told the detectives that mother had lived with them at the apartment since they all moved in there, and she knew mother was “wanted.” When father was confronted with this information, he eventually said he was going to tell the detectives what really happened, and admitted that mother and the children were in the apartment with him when the incident occurred. Father said he lied about mother being in the apartment because he knew she was wanted and did not want her to get into trouble.

Father told the detectives that he was playing video games when mother told him Trevor had soiled his diaper and gotten it all over himself. Mother took Trevor to the bathroom and started the bath water. Father walked into the bathroom and was startled by the steam coming off the water. Father thought the water was too hot, so he checked it himself, but after touching it he determined it was not too hot and left the bathroom to clean the mess Trevor had made. After removing the sheets and taking the dirty diaper downstairs, father came back up and re-entered the bathroom as mother was removing Trevor from the tub; father noticed Trevor’s feet were pink and his skin peeling. They both started to “freak out”; mother took the children and fled the area. The detective questioned father about his statement that he could see the steam from the water, but

³ *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

father said it was not too hot. According to the detective, father could not provide a satisfactory explanation for Trevor's injuries.

During father's interview, mother came to the police station to turn herself in. The detectives interviewed mother after advising her of her *Miranda* rights. Mother confirmed she, father and their two children had lived with Jazmine since May, and she and father babysat Trevor on a regular basis. Mother said that after Trevor soiled his diaper and made a mess on the bed, she carried Trevor into the bathroom and turned on the water in the tub. The shower nozzle was leaky and a small stream of water was coming from it. Mother checked the water temperature; it was not hot. She sat Trevor in the tub and left him unattended with the water running while she and father began cleaning up the mess. While she removed the sheet from the bed, father took the diaper downstairs. A short time later she heard Trevor screaming from the bathroom. She and father got to the bathroom at nearly the same time. Trevor was now standing in the tub, holding onto the side while facing the toilet. Mother immediately picked him up and saw his legs were burned. Mother checked the water temperature and felt it was "really hot." Shortly afterward, mother left the area with the children because she knew she had a warrant for her arrest.

The detectives then spoke with father, who confirmed that mother's story was accurate. Father, however, maintained that he checked the water temperature before leaving Trevor by himself and it was not hot; he did not check the temperature after going back into the bathroom. Father was adamant that he did not hear Trevor scream when they were out of the bathroom.

Meanwhile, family members had transported the children to the police station, where they were released to the custody of a Department caseworker, who placed them into protective custody. Mother and father were arrested for violations of Penal Code section 273a, subdivision (a) (child endangerment likely to cause great bodily injury) and Penal Code section 273d, subdivision (a) (child abuse causing great bodily injury); they

were transported and booked into the Kern County jail. An additional felony warrant out of Tulare County was added to mother's booking charges.

Later, investigating officers went to the apartment and tested the water temperature from the tub faucet. The temperature of the hot water reached 144 degrees after running a minute and 12 seconds. The water heater for the apartment, which was in the garage, had the following settings: "low, hot, A, B, C, Very hot." The water heater was set between B and C.

On August 11, the detectives interviewed Trevor's treating physician in Fresno, Dr. John Scholefield. Trevor had undergone skin graft surgery on August 10. Dr. Scholefield advised the detectives that Trevor's burns were consistent with "submersion." According to Dr. Scholefield, a child would only have to be submerged in 140 degree water for one to two seconds to receive the burns Trevor suffered. A detective provided Dr. Scholefield with mother's explanation of how Trevor was burned, i.e. leaving him unattended in the tub for one to three minutes; Dr. Scholefield opined this was not consistent with the burns on Trevor's body and explained that even at one year of age, Trevor would have stood up and started crying as the water temperature increased. Trevor, however, would not have been able to stand up as mother described due to the severity of the burns on his feet, and would have had more severe burns higher up on his legs, crotch area, and back had he been left unattended in the water for a long period of time. Dr. Scholefield further explained that if Trevor were set into water that had already reached 140 degrees and left unattended, he mostly likely would have burns on his hands from attempting to push himself up, which he did not. It appeared to Dr. Scholefield that Trevor was set into the water while still being held and quickly pulled back out.

That same day, the detectives re-interviewed mother and father, explaining to them in separate interviews that according to Dr. Scholefield, Trevor's burns could not have occurred in the way they explained. Neither parent provided any new information or explanation on how the burns occurred.

The social worker interviewed mother and father separately on August 12. Mother told the social worker that after Trevor had “pooped” all over, she took him to the bathroom in Jazmine’s bedroom and began to run the water. The knobs were broken, so water ran out of both the bathtub faucet and showerhead. Mother put Trevor in the tub standing up and left for two to three minutes to clean up the bed. She heard crying from the bathroom, went in, and saw Trevor standing up in the bathtub. The water covered Trevor’s feet and rose to his mid-calf. She felt the water coming from the showerhead and noticed Trevor’s back was white. Knowing something was wrong, she called to father, took Trevor out of the bathtub and wrapped him in a towel. Mother had never heard Trevor cry like that before. While father waited with Trevor, mother went to her sister’s neighboring apartment, as there was no telephone in mother’s apartment; mother’s sister called 911. Mother stayed at her sister’s apartment because she knew she had a warrant from Tulare County for fighting when she was a juvenile and did not want to be arrested. She sent the children with relatives because she knew they would be taken into protective custody. Mother denied being mad at Trevor; she had cared for Trevor for a long time and had a bond with him. Mother described Trevor as a good baby who was not a problem.

Father told the social worker that after mother discovered Trevor had “pooped all over,” he went to the bedroom, put the sheets on the balcony, and took the diaper downstairs to throw it away while mother took Trevor to the bathroom. When he came back upstairs, mother was sitting on the toilet next to Trevor, who was not yet in the bathtub, feeling the water. Father left the bathroom; when he returned, he saw mother place Trevor in the bathtub, which had a little bit of water in it. Father again left the bathroom; at that time, Trevor was standing in the bathtub. A short time later, mother called father to the bathroom; Trevor was wrapped in a towel and father could see his feet. Father stayed with Trevor in the hallway while mother went to her sister’s. Trevor only started crying when the paramedics arrived. Father never saw Trevor sitting in the

bathtub. Father described Trevor as a good child and denied that anyone was mad at him. Father said that mother was not mad at Trevor, but just thought the mess was nasty.

On August 25, mother and father each pled nolo contendere to a single misdemeanor count of willful cruelty to a child, Penal Code section 273a, subdivision (a), and were sentenced to a year in jail. A review of the Criminal Justice Informational System for mother and father revealed only this conviction. There were no prior child protective services referrals or cases for the family.

The social worker reported that the parents had no reasonable explanation as to how Trevor suffered such severe burns and asked the juvenile court to sustain the petition's allegations.

At the September 23 jurisdictional hearing, the parents submitted on the social worker's report. Father's and mother's attorneys both asked the juvenile court to dismiss the allegation under section 300, subdivision (a), arguing the record showed that, while the situation was serious, it was an accident involving the negligence of both parents. Father's attorney read from a letter father wrote in which he acknowledged being negligent, expressed remorse, and resolved to learn from the experience to ensure it never happened again. The children's attorney argued there was prima facie evidence to find true the subdivision (a) count, as the parents were more focused on cleaning up the room than attending to Trevor. County counsel argued that the parents' varying stories were evidence of their guilt, and based on those stories, along with Dr. Scholefield's opinions, it was fair to say the parents did not provide a reasonable explanation for how Trevor sustained his injuries. County counsel further argued that considering this in light of the parents' criminal conviction, the subdivision (a) allegation should be sustained.

The juvenile court proposed to amend the petition from a subdivision (a) allegation to a subdivision (b) allegation, as it thought there was "appropriate evidence" for a finding under subdivision (b). Mother's and father's attorney submitted on the juvenile court's tentative, with father's attorney adding that he thought the evidence

supported an accidental injury, namely placing the child in a bathtub without checking the water. The children's attorney argued it was not accidental and the subdivision (b) count was not appropriate because the parents left Trevor in the bathtub unattended. County counsel argued that based on Dr. Scholefield's opinion, the medical evidence was that there was a one to two second immersion in 140 degree water, and the parents never said this was what they did. Instead, the parents made misrepresentations, which showed they were guilty of an intentional act.

The juvenile court explained that in its view, Dr. Scholefield's expert opinion was a description or recitation of negligence, and that differing stories happen on a fairly regular basis. The juvenile court believed the evidence showed that Trevor soiled himself substantially and the parents, in trying to take care of the situation, probably overreacted, but clearly did not take care of Trevor as they should have, which was negligent. The juvenile court, however, did not find any evidence of the intent required for a subdivision (a) finding. Accordingly, the juvenile court amended the petition to conform to proof by striking the term "non-accidental" under the subdivision (a) allegation and adding an allegation under subdivision (b). The juvenile court found the children were persons described by section 300, subdivisions (b) and (g). The juvenile court further explained that in making its ruling, it considered the parents' nolo contendere pleas to Penal Code section 273a, subdivision (a), and it believed section 300, subdivision (b) was consistent with the language found in that statute. A dispositional hearing was set for November 24.

In the social worker's report prepared for that hearing, dated November 18, the Department recommended the parents receive family reunification services. Mother had been released from custody in October and was living with a relative. Father, however, remained incarcerated. Mother and father both had been cooperative with the Department. Since mother's release from custody, she had attended all regularly scheduled visits with the children, enrolled in counseling for physical abuse as a perpetrator, and been referred to a family reunification program. Father had received in-

custody visits with the children and would be provided services upon his release. The social worker explained that based on the information and severity of Trevor's injuries, there continued to be great risk to the children, and since the parents had been incarcerated, they were not able to address the issues that caused the children's removal or to ensure the children were safe from the same abuse Trevor suffered.

At the November 24 dispositional hearing, County counsel submitted on the social worker's report and recommendation. Mother's attorney asked the juvenile court to consider family maintenance services for mother, and allow father to join the home on his release from custody; father's attorney joined in this request. Both the children's attorney and County counsel asked the juvenile court to set aside its finding on the subdivision (a) allegation and argued for family reunification services for the parents.

The juvenile court denied the request to reinstate the subdivision (a) allegation. The juvenile court found use of a family reunification plan was appropriate to ensure that the severe situation was addressed and remedied as to the parents' conduct. The juvenile court also found the need for further education or training, and there was still a substantial danger to the physical health, safety, and protection of the children if they were returned home before the parents received that training. Based on the evidence as to the severity of the pleas and the circumstances of the accident, the juvenile court believed there was clear and convincing evidence of a substantial danger to the children if they were returned to their parents. The juvenile court declared the children dependents, found there were no reasonable means to protect the children's physical health without removal from the physical custody of their parents, the Department had made reasonable efforts and provided reasonable services to prevent or eliminate the need for the children's removal from the home, ordered the children removed from the parents' physical custody, ordered family reunification services for the parents, and adopted the family reunification plan.

DISCUSSION

The children contend the juvenile court erred in failing to find they were described by section 300, subdivision (a). They assert that the Department's uncontradicted expert evidence established that the parents' accounts of Trevor's injuries had to be false and his severe burns were caused by intentional, quick immersion into boiling water, which required the juvenile court to find the subdivision (a) allegation true as a matter of law.

The juvenile court took jurisdiction over the children pursuant to section 300, subdivisions (b) and (g), which findings have not been challenged. If any one of several enumerated statutory bases for jurisdiction is supported by substantial evidence, a reviewing court need not consider whether other alleged statutory bases are also supported by the evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) As the children acknowledge, because these bases for jurisdiction have not been contested, we need not decide whether jurisdiction also was appropriate under subdivision (a). (See *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1415, fn. 6.)

Nevertheless, we may exercise our discretion and reach the merits of a challenge to any jurisdictional finding where, as pertinent here, that finding could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763; see also *In re D.P.* (2014) 225 Cal.App.4th 898, 902; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.)

The children urge us to exercise our discretion to reach the merits of their contention because (1) in order to properly protect them in the event of future dependency proceedings, the record must reflect the parents inflicted non-accidental, serious physical injury on a child in their care, and (2) absent a subdivision (a) finding, the parents' names will not be placed on the Child Abuse Central Index (CACI) under the Child Abuse and Neglect Reporting Act (Pen. Code, §§ 11164, et seq.). We are not persuaded.

First, the children do not explain why only a true finding on the subdivision (a) allegation will properly protect them in the case of future dependency proceedings; they

do not identify any specific potential impact in a future case and we can find none on our own. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493 [appellate court declined to reach merits of an appeal where an alleged father “has not suggested a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings”].) A past jurisdictional finding would be entitled to no weight in establishing jurisdiction, as the Department would be required to demonstrate jurisdiction by presenting evidence of current circumstances placing the children at risk, and other relevant dependency findings also would require evidence of present detriment. (*Id.* at p. 1495.)

The children’s assertion that without a true finding on the petition’s subdivision (a) allegation their parents’ names could not be placed on the CACI is incorrect. It is the Department’s duty, not the court’s, to report known or suspected cases of child abuse to the Department of Justice. That duty is triggered by an investigator determining that it is more likely than not that child abuse or neglect occurred, not by the sustaining of a section 300 petition. (Pen. Code, § 11169, subd. (a); see also Pen. Code, § 11165.12, subd. (b) [a “substantiated report” of child abuse or neglect is one based upon evidence the investigator believes makes it more likely than not child abuse occurred].) The only CACI-related consequence of a jurisdictional finding is that the parent cannot challenge his or her listing on the index. (Pen. Code, § 11169, subd. (e).)

Since we find no threatened prejudice to the children from the juvenile court’s failure to find jurisdiction under section 300, subdivision (a), we decline to exercise our discretion to review its decision.

DISPOSITION

The appeal is dismissed.